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**IRWIN, CAMPBELL & TANNENWALD, P.C.**
ATTORNEYS AT LAW
1320 EIGHTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 728-0400
FAX (202) 728-0354

DOCKET FILE COPY ORIGINAL

JEFFREY L. TIMMONS
(202) 728-0401 x103
Licensed in Georgia Only



September 29, 1995

VIA MESSENGER
Regina Keeney, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Re: Ex Parte Presentation of Clarus Communications
PR Docket No. 93-144, 800 MHz Specialized Mobile Radio ("SMR")

Dear Ms. Keeney:

This letter is submitted on behalf of Clarus Communications and its principal, Dr. Patrick Tennican ("Clarus"), in response to the Commission's Public Notice[1] inviting additional ex parte presentations in the above-referenced proceeding. The Public Notice announced a September 18, 1995 Commission meeting and invited additional ex parte presentations concerning the issues raised in the Further Notice of Proposed Rulemaking in the proceeding, regarding wide-area licensing of 800 MHz SMR spectrum, the rights and obligations of wide-area licensees, provisions for continued operations by incumbent 800 MHz SMR licensees, and competitive bidding (i.e., auction) issues.

Clarus, through a number of five channel trunked 800 MHz SMR licenses held by Dr. Tennican, is developing an SMR system to offer services targeted to emergency medical and public health or safety organizations. In addition, through agreements with other incumbent licensees, Clarus and Dr. Tennican plan to develop an enhanced SMR system to offer such services on a regional, or wide-area, basis.

Without addressing the merits of whether the Commission should adopt auctions as a method for licensing 800 MHz SMR, Clarus submits that the Commission must adopt a

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[1] See Public Notice, Report No. WT 95-23, DA 95-1965 (released September 12, 1995) (the "Public Notice").

licensing method which treats incumbent 800 MHz licensees fairly and reasonably. Incumbent licensees have invested substantial time, efforts, funds and other resources in the development of their systems. Accordingly, any rules adopted must accommodate the current business operations incumbent licensees, or must adequately compensate incumbent licensees for any relocation of their systems which may be required.[2]

Clarus believes that the "Incumbent Bill of Rights" set forth in the Reply Comments of the American Mobile Telecommunications Association, Inc. ("AMTA") provide a good starting point for defining and protecting the rights of incumbent licensees, and supports the adoption of such protections for incumbent licensees.[3] In addition, any rules adopted by the Commission should expressly include the following provisions:

1) Parties that win a wide-area license at auction must bear all costs of the reconfiguration and relocation of incumbents' systems to comparable channels, including customer equipment costs, regardless of whether the relocation is during a voluntary or a mandatory relocation period.

2) Incumbent licensees should also be compensated for costs which may be difficult to quantify (such as their internal administrative costs, loss of goodwill, or the limitations placed on their ability to expand or modify their systems); this compensation may be fixed through negotiations during any voluntary relocation period, and should be guaranteed in some manner during the mandatory relocation period (perhaps based on a specified percentage of the out-of-pocket costs).

3) Incumbent licensees may only be relocated to "comparable spectrum," with "comparable spectrum" clearly defined. At a minimum, incumbent licensees should receive the same quantity (i.e., MHz) of spectrum, of sufficiently similar characteristics that the same equipment may be used by the incumbent licensee and its customers (or have such existing

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[2] The proposal discussed by the Commission in its September 18 meeting would require relocation of incumbent licensees in the 200 upper 800 MHZ SMR channels (i.e., those in the 861 to 865 MHz range).

[3] See AMTA Reply Comments at 22-23. The "Incumbents' Bill of Rights" generally included: (i) full compensation for reconfiguration and relocation to comparable spectrum; (ii) tax certificates; (iii) 70-mile co-channel protections of incumbents' systems on the new channels; (iv) transferability of all guarantees to third parties; and (v) reconfiguration and relocation simultaneously for all channels licensed to an incumbent within the wide-area license.

equipment replaced by any required new equipment at the new wide-area licensees expense), and which will provide at least the same coverage with the same signal quality as the existing system.

4) Any reconfiguration or relocation should maintain any integration of the incumbent licensees' systems with other SMR systems (i.e., with other systems held by the incumbent licensee or other licensees).

5) If "comparable spectrum" is not available, the incumbent licensee should not be required to relocate.

6) Incumbents which are not relocated should be free to transfer or assign their licenses to parties other than the new wide-area licensee, subject of course to the prior approval of the Commission.

7) The early notification of the wide-area auction winners' intentions, as proposed by AMTA, should be given within a shorter period of time, such as two or three months; auction winners should be prepared to give such early notification since fairly detailed planning is required prior to the auction in order to properly develop a valuation of the spectrum being auctioned.

The need for clear and precisely defined Commission rules to ensure relocation only to truly comparable channels and for adequate compensation to incumbent licensees should be readily apparent -- the newly-licensed wide-area SMR licensees will have a clear incentive to not make the incumbent licensees whole, since they will be directly competing with the incumbent licensees, and any business failures on the part of the incumbents may cause the spectrum to become available to the wide-area licensee. It would be illogical -- not to mention unjust and unreasonable -- for the Commission to hamper the ability of incumbent licensees to compete so as to create a new brand of wide-area SMR competitor, when the incumbent licensees generally have made substantial investments and are successfully competing in the commercial mobile radio service marketplace.

Finally, on a more general note, Clarus has concerns about the viability of the Commission's proposed plan to mandate relocation of incumbent licensees to the 80 lower 800 MHz SMR channels, or to the 50 Business or 150 General Category channels. It is our understanding that very little spectrum is left available for licensing in those bands, such that relocation to such channels is not truly a viable option. Clearly it makes little sense to mandate relocation to certain channels is capacity is not available in those channels. However, as long as the rights of incumbent licensees are properly and adequately protected -- by compensation

for and relocation of incumbents only to truly comparable channels, where "comparable channel" is clearly and fairly defined -- Clarus would have no objection to the Commission's determination of the viability of such a relocation plan.

Clarus looks forward to the opportunity to present its position on these matters in a meeting with you or your staff, if time permits, and appreciates your consideration of its position on this matter.

Very truly yours,

Jeffrey L. Timmons